

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION**

IN THE MATTER OF:

NAME(S): DAWKINS, HOWARD DEAN **CHAPTER 13 NO.** 08-40808
OUR FILE NO. 12645-WG

**ADDRESS: 4004 SHARON CIRCLE
SHELBY, NC 28152**

SSN: --- -- 4346

Debtor

**MOTION FOR APPROVAL OF
PHYSICAL DAMAGE INSURANCE SETTLEMENT REGARDING RESIDENCE AND
TO PAYOFF PLAN**

COME NOW the above-named debtor, by and through his attorney of record, and respectfully move the Court pursuant to Section 1329 of Title 11 of the United States Code, Rule 9013 of the Rules of Bankruptcy Procedure, and Rule 9013-1 of the Local Bankruptcy Rules for the entry of an order approving a physical damage insurance settlement and to payoff plan, and in support hereof allege and say that:

1. This case was commenced by the filing of a petition with the Clerk of this Court on December 5, 2008.
2. The 341(a) meeting of creditors was held in Shelby, North Carolina on January 16, 2009.
3. The Chapter 13 plan was subsequently confirmed by order of this Court.
4. The plan presently provides for a monthly payment of \$850.00.
5. The plan includes a debt to Bank of America Mortgage (hereinafter "BofA") secured by a first lien on the debtor's rental property located on a 0.555 acre lot at 2451 Cleveland Avenue, Grover, North Carolina as described in that certain Deed as recorded in Book 1126 at Page 458 of the Cleveland County Public Registry. The aforementioned property was destroyed by fire on September 13, 2010. The property is identified on the records of the trustee as secured claim number 3.
6. NGM Insurance Company has offered to settle the insurance damage claim for the sum of \$107,000.00 and in fact has issued a check made payable to the debtor and Nations Bank in this amount. This check is being held at the office of the attorney for the debtor pending this Court's approval of this motion.
7. The debtor is therefore moving this Court to approve the settlement with the insurance proceeds in the sum of \$107,000.00 utilized to first payoff the mortgage that is owed on the house that was destroyed at 2451 Cleveland Avenue, Grover, North Carolina.

The remaining funds shall be used to payoff the bankruptcy plan. Any remaining funds after that shall be paid to the debtor.

8. The debtor is further moving this Court for an Order requiring Nations Bank to endorse the settlement check and return it to the office of the attorney for the debtor or to accept the insurance settlement check and issue a check directly to the chapter 13 trustee to payoff the mortgage and bankruptcy plan with any remaining proceeds to be paid directly to the debtor.

9. The debtor is also moving this Court to adopt the settlement as an order subject to the contempt powers of this Court.

10. The debtor is also moving the Court for such other and additional relief as to the court may seem just and proper.

WHEREFORE, the debtor respectfully prays of the Court as follows:

A. That the debtor's motion for approval of a physical damage insurance settlement be granted as provided for in the body of this motion;

B. That the attorney for the debtor be granted an additional non-base legal fee of \$350.00 and expenses of \$94.00, said fee and expenses to be paid direct to the attorney for the debtor from the insurance settlement proceeds upon the pay off of the mortgage and of the bankruptcy plan;

C. That the insurance settlement be approved as set forth herein;

D. That Nations Bank be ordered to endorse the settlement check and return it to the office of the attorney for the debtor or to accept the insurance settlement check and issue a check directly to the chapter 13 trustee to payoff the mortgage and bankruptcy plan with any remaining proceeds to be paid directly to the debtor;

E. That the debtor has such other and further relief as to the Court may seem just and proper.

Dated this the 3rd day of December 2010



William S. Gardner
Gardner Law Offices
Attorney for the Debtors
NC State Bar No. 32684
P.O. Box 1000
Shelby, NC 28151-1000
Phone (704) 487-0616 / FAX (888) 870-1644
e-mail: bgardner@maxgardner.com

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION**

IN THE MATTER OF:

NAME(S): DAWKINS, HOWARD DEAN **CHAPTER 13 NO.** 08-40808
OUR FILE NO. 12645-WG

**ADDRESS: 4004 SHARON CIRCLE
SHELBY, NC 28152**

SSN: --- -- 4346

Debtor

**NOTICE OF MOTION FOR APPROVAL OF
PHYSICAL DAMAGE INSURANCE SETTLEMENT REGARDING RESIDENCE AND
TO PAYOFF PLAN
AND NOTICE OF OPPORTUNITY FOR HEARING**

(No-Protest Notice: No Hearing Will Be Held Unless Request For Hearing Is Filed)

PLEASE BE ADVISED that the above-named debtor has filed papers with the United States Bankruptcy Court for the Western District of North Carolina for approval of a physical damage insurance settlement regarding damage to the debtor's rental property in the sum of \$107,000.00; for the proceeds to be used to payoff the mortgage of the destroyed property and payoff the bankruptcy plan with the remaining proceeds to be paid directly to the debtor; for an Order requiring Nations Bank to endorse the settlement check and return it to the office of the attorney for the debtor or accept the insurance settlement check and issue a check directly to the chapter 13 trustee to payoff the mortgage and the bankruptcy plan with any remaining proceeds to be paid directly to the debtor; and for legal fees of \$350.00 and expenses of \$94.00, said fee and expenses to be paid direct to the attorney for the debtor from the insurance settlement proceeds upon the pay off of the mortgage and the bankruptcy plan. A copy of these paper(s) is included with this Notice or copied on the reverse side of this Notice.

YOUR RIGHTS MAY BE AFFECTED. YOU SHOULD READ THESE PAPERS CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY, IF YOU HAVE ONE IN THIS BANKRUPTCY CASE. IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY WISH TO CONSULT ONE.

TAKE FURTHER NOTICE that if you do not want the Court to grant the relief requested by the debtor in his motion, or if you want the Court to consider your views on the motion, **then on or before December 20th, 2010**, you or your attorney must do three (3) things:

1. **File with the court a written response requesting that the Court hold a hearing and explaining your position. File the response at:**

United States Bankruptcy Court

Western District of North Carolina
P.O. Box 34189
Charlotte, NC 28234-4189

If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

2. **On or before the date stated above for written responses, you must also mail or fax a copy of your written request to:**

William S. Gardner
Attorney for the Debtor
P.O. Box 1000
Shelby, NC 28151-1000

and to:

Steven G. Tate
Chapter 13 Trustee
P.O. Box 1778
Statesville, NC 28687-1778

3. **Attend the hearing scheduled for Friday, January 28, 2011 at 9:30 a.m.** in Courtroom Number 5 at the Cleveland County Courthouse and Law Enforcement Center, 100 Justice Place, Shelby, North Carolina.

If you or your attorney do not take these steps, **A HEARING WILL NOT BE HELD**, and the Court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Dated this the 3rd day of December 2010



William S. Gardner
Gardner Law Offices
Attorney for the Debtors
NC State Bar No. 32684
P.O. Box 1000
Shelby, NC 28151-1000
Phone (704) 487-0616 / FAX (888) 870-1644
e-mail: wgardner@maxgardner.com

CERTIFICATE OF SERVICE

WILLIAM S. GARDNER, attorney for the debtor, hereby certifies to the Court as follows:

1. I am not a party for the foregoing proceeding;
2. I am not less than 18 years of age;
3. I have this day served a copy of the foregoing **MOTION FOR APPROVAL OF PHYSICAL DAMAGE INSURANCE SETTLEMENT REGARDING RESIDENCE AND TO PAYOFF PLAN AND NOTICE OF OPPORTUNITY FOR HEARING** on all parties in interest by placing the same in an envelope, first-class mail, postage prepaid, addressed to each person at his dwelling house or usual place of abode or to the place where he regularly conducts his business or profession as follows:

NGM Insurance Company
P.O. Box 2006
Keene, NH 03431

Bank Of America Mortgage
475 Crosspoint Parkway
Getzville, NY 14068-1609

Howard Dean Dawkins
4004 Sharon Circle
Shelby, NC 28152

And via the Court's Electronic Case Filing System to:

Steven G. Tate, Trustee
P.O. Box 1778
Statesville, NC 28687-1778

Linda Simpson, Bankruptcy Administrator
402 W. Trade St., Room 200
Charlotte, NC 28202-1664

4. I have also served copies of the **NOTICE OF OPPORTUNITY FOR HEARING** on all creditors listed on the master mailing matrix, a copy of which is attached hereto, in the same manner and method as described in paragraph number 3 above;

5. To the best of my knowledge, information and belief, the parties in interest are not infants or incompetent persons;

6. Service as outlined herein was made within the United States of America.

Dated this the _____ day of December 2010



William S. Gardner
Gardner Law Offices
Attorney for the Debtors
NC State Bar No. 32684
P.O. Box 1000
Shelby, NC 28151-1000

Phone (704) 487-0616 / FAX (888) 870-1644
e-mail: bgardner@maxgardner.com

MATRIX ATTACHED HERETO AS EXHIBIT "A"

Label Matrix for local noticing
0419-4
Case 08-40808
Western District of North Carolina
Shelby
Thu Jan 14 08:37:24 EST 2010

Bank Of America N.A.
475 Crosspoint Pkwy
P.O.Box 9000
Getzville, NY 14068-9000

Branch Banking and Trust Company
Poyner & Spruill LLP
c/o James S. Livermon, III
Post Office Box 353
Rocky Mount, NC 27802-0353

Cleveland County Department of Social Servic
P. O. Box 9006
Shelby, NC 28151-9006

DaimlerChrysler Financial Services Americas,
Hale, Dewey & Knight PLLC
88 Union Ave, Ste. 700
Memphis, Tn 38103-5128

eCAST Settlement Corporation
POB 35480
Newark, NJ 07193-0001

Shelby Division
P.O. Box 34189
Charlotte, NC 28234-4189

(p)BB AND T
PO BOX 1847
WILSON NC 27894-1847

BB&T Of NC Business Loan Center
P.O. Box 580003
Charlotte, NC 28258-0003

Bank Of America
P.O. Box 1390
Norfolk, VA 23501-1390

Bank Of America Bankruptcy Dept.
Dept NC4-105-03-14
P.O. Box 26012
Greensboro, NC 27420-6012

Bank Of America Mortgage
475 Crosspoint Parkway
Getzville, NY 14068-1609

Bankruptcy Administrator
402 W. Trade St., Room 200
Charlotte, NC 28202-1673

Belk/GEMB
P.O. Box 981400
El Paso, TX 79998-1400

CLEVELAND COUNTY TAX COLLECTOR
PO BOX 370
SHELBY, NC 28151-0370

CSC Credit Services
652 N. Sam Houston Pkwy E. Ste 400
P.O. Box 674402
Houston, TX 77267-4402

Certegy Check Services, Inc.
P.O. Box 30046
Tampa, FL 33663-0001

Chase Bank USA NA by eCAST Settlement Corpor
as its agent
POB 35480
Newark, NJ 07193-0001

Chase Card Services
800 Brooksedge Blvd.
Columbus, OH 43081-2822

Chase Manhattan Bank USA, NA
P.O. Box 15298
Wilmington, DE 19850-5298

Chase Manhattan Bank USA, NA
P.O. Box 15299
Wilmington, DE 19850-5299

ChexSystems
Attn: Consumer Relations
7805 Hudson Rd., Suite 100
Woodbury, MN 55125-1703

(p)CHRYSLER FINANCIAL
27777 INKSTER RD
FARMINGTON HILLS MI 48334-5326

CitiFinancial
P.O. Box 499
Hanover, MD 21076-0499

CitiFinancial Mortgage Co., Inc.
1111 Northpoint Dr., Bldg 4
Coppell, TX 75019-3831

CitiFinancial, Inc.
P.O. Box 70919
Charlotte, NC 28272-0919

Cleveland Cty Tax Collector
P.O. Box 370
Shelby, NC 28151-0370

Consolidated Federal Credit Union
2021 NE Sandy Blvd.
Portland, OR 97232-2817

Credit Protection Association, LP
Act 1467677146
13355 Noel Rd. Suite 2100
Dallas, TX 75240-6837

DaimlerChrysler Financial Services
Americas, LLC
C/O Hale, Dewey, & Knight, PLLC
88 Union Avenue Suite 700
Memphis, TN 38103-5128

Dawn W. Dawkins
213 S. Fork Dr.
Shelby, NC 28152-6668

Discover Bank/DFS Services LLC
PO Box 3025
New Albany, OH 43054-3025

(P)DISCOVER FINANCIAL SERVICES LLC
PO BOX 3025
NEW ALBANY OH 43054-3025

Equifax Information Services LLC
P.O. Box 740256
Atlanta, GA 30374-0256

Experian
P.O. Box 2002
Allen, TX 75013-2002

(p)FIRST NATIONAL BANK OF SHELBY
PO BOX 168
SHELBY NC 28151-0168

GE Money Bank
Attn: Bankruptcy Dept.
P.O. Box 103104
Roswell, GA 30076-9104

GE Money Bank dba LOWES BRC
Recovery Management Systems Corporation
For GE Money Bank
25 S.E. 2nd Avenue, Suite 1120
Miami, FL 33131-1605

(p)INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATIONS
PO BOX 21126
PHILADELPHIA PA 19114-0326

ISO Claim Search
545 Washington Blvd.
Jersey City, NJ 07310-1607

KAY JEWELERS
C/O WELTMAN, WEINBERG & REIS
323 W. LAKESIDE AVE., 2ND FL
CLEVELAND, OH 44113-1009

Kay Jewelers
P.O. Box 3680
Akron, OH 44309-3680

Kay Jewelers
P.O. Box 740425
Cincinnati, OH 45274-0425

LexisNexis
1900 NW Expressway, Suite 1600
Oklahoma City, OK 73118-1845

Lowe's
P.O. Box 530914
Atlanta, GA 30353-0914

Lowe's Business Account
P.O. Box 530970
Atlanta, GA 30353-0970

N.C. Child Support Enforcement
100 E. Six Forks Rd.
Raleigh, NC 27609-7752

N.C. Department Of Revenue
P.O. Box 25000
Raleigh, NC 27640-0002

NC Department Of Revenue
P.O. Box 1168
Raleigh, NC 27602-1168

North Carolina Department of Revenue
Bankruptcy Unit
P.O. Box 1168
Raleigh, NC 27602-1168

Roundup Funding, LLC
MS 550
PO Box 91121
Seattle, WA 98111-9221

S.C. Department Of Revenue
301 Gervais St.
P.O. Box 125
Columbia, SC 29214-0002

S.C. Department Of Revenue
PO Box 12265
Columbia, SC 29211-2265

Telecheck Services
5251 Westheimer
Houston, TX 77056-5499

Time Warner Cable
3140 W. Arrowood Rd.
Charlotte, NC 28273-0001

TransUnion
P.O. Box 2000
Chester, PA 19016-2000

Truliant Federal Credit Union
585 Woughtown St #2A
Winston-Salem, NC 27107-2275

(p)TRULIANT FEDERAL CREDIT UNION
P O BOX 25132
WINSTON SALEM NC 27114-5132

U.S. Attorney's Office
Suite 1700, Carillon Bldg.
227 W. Trade St.
Charlotte, NC 28202-1675

United States Attorney
Room 207 U.S. Courthouse
100 Otis Street
Asheville, NC 28801-2608

Verizon Wireless
Bankruptcy Group
P.O. Box 3397
Bloomington, IL 61702-3397

WFNNB Goody's
P.O. Box 659704
San Antonio, TX 78265-9704

WFNNB Bankruptcy Dept.
P.O. Box 182125
Columbus, OH 43218-2125

Washington Mutual Card Services
P.O. Box 660487
Dallas, TX 75266-0487

eCAST Settlement Corporation assignee of
Chase Bank USA NA successor by
merger to Washington Mutual
POB 35480
Newark, NJ 07193-0001

Howard Dean Dawkins
4004 Sharon Circle
Shelby, NC 28152-7930

Steven G. Tate
P.O. Box 1778
Statesville, NC 28687-1778

William S. Gardner
Gardner Law Offices
PO Box 1000
Shelby, NC 28151-1000

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

BB&T Bankruptcy
PO Box 1847
Wilson, NC 27894-1847

Chrysler Financial
5225 Crooks Rd. Suite 140
Troy, MI 48098

(d)Chrysler Financial
P.O. Box 5055
Southfield, MI 48086-5055

Discover Card
P.O. Box 15192
Wilmington, DE 19886-1020

(d)Discover Financial Services
P.O. Box 8003
Hilliard, OH 43026

First National Bank
P.O. Box 168
Shelby, NC 28151-0168

(d)First National Bank of Shelby
PO Box 168
Shelby, NC 28151

IRS
P.O. Box 21126
Philadelphia, PA 19114

(d)Internal Revenue Service
P.O. Box 21126
Philadelphia, PA 19114

Truliant Federal Credit Union
P.O. Box 26000
Winston-Salem, NC 27114-6000

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Kay Jewelers

(d)eCAST Settlement Corporation
POB 35480
Newark NJ 07193-0001

End of Label Matrix
Mailable recipients 67
Bypassed recipients 2
Total 69